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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,271	12/04/2003	William Paul	PWL-10002/15	7120
25006 7590 03/01/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER KATCHEVES, BASIL S	
			ART UNIT 3635	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/01/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/728,271

Applicant(s)

PAUL, WILLIAM

Examiner

Basil Katcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                                                                  |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/10/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1, 16 and 17 are objected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are drawn to a subcombination track but then claim a positive relation to studs thus appearing to be a combination track and studs. The claims are being examined as a combination track and stud system. Clarification is required.

Claim 5 is objected to. Claim 5 recites the limitation "and end extending". This is not clear and the claim has been examined as best understood. Clarification is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "extending studs" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said end to end extending bodies" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "said pairs of apertures" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "each side extending aperture" in lines 8 & 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said selected pairs of apertures" in line 25. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,845,601 to Kostecky in view of U.S. Patent No. 6,301,854 to Daudet et al.**

Regarding claim 1, Kostecky discloses a track having a U shape (fig. 2: 3) with a plurality of aligned apertures on the sides (fig. 1: see apertures on side 12 & 13 and where 14 points), and ends of studs (20) seated in the track. However, Kostecky does not disclose the use of upward extending tabs in the track bottom. Daudet discloses pairs of upward extending tabs in a track bottom (fig. 10: 30) for securing studs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky by adding upward tabs, as disclosed by Daudet, in order to better secure the studs to the track.

Regarding claim 2, Kostecky discloses two parallel track bodies (fig. 1: see top and bottom tracks).

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Regarding claim 3, Kostecky discloses a lip edge (fig. 1: flat portion between side edges 6) extending from the track body which engages a succeeding track body.

Regarding claim 4, Kostecky discloses the lip edge (6) as having a means and fastener to overlap and fasten to a succeeding track body (fig. 1: 7 & 8).

Regarding claim 5, Kostecky discloses an inwardly extending incision (fig. 2: 5) which, when coupled to an adjacent track will overlap it (fig. 1: see upper track connection with overlap of incisions).

Regarding claim 6, Kostecky discloses a lip edge (fig. 1: right and left side edges 6) which engages a bracket (fig. 1: corner bracket 9).

Regarding claims 7 and 8, Kostecky in view of Daudet discloses the tabs as punched out and correspond to each stud, each stud corresponding to the side apertures, therefore the tabs would correspond to the side apertures.

Regarding claim 9, Kostecky discloses pairs of apertures but does not disclose them as having a diameter (being rounded). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apertures of Kostecky to be rounded as a simple design choice since structurally, there would be no negative effects between a squared aperture and a rounded aperture.

Regarding claim 10 and 11, Kostecky discloses the track as capable of receiving a three sided stud or wood stud.

Regarding claim 12, Kostecky discloses the basic claim structure of the instant application but does not disclose specific dimensions. Applicant fails to show criticality

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for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claim 16, Kostecky discloses a track having a U shape (fig. 2: 3) with a plurality of aligned apertures on the sides (fig. 1: see apertures on side 12 & 13 and where 14 points), and ends of studs (20) seated in the track. Kostecky also discloses a lip edge (fig. 1: right and left side edges 6) which engages a bracket (fig. 1: corner bracket 9). Kostecky discloses pairs of apertures but does not disclose them as having a diameter (being rounded). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apertures of Kostecky to be rounded as a simple design choice since structurally, there would be no negative effects between a squared aperture and a rounded aperture. However, Kostecky does not disclose the use of upward extending tabs in the track bottom. Daudet discloses pairs of upward extending tabs in a track bottom (fig. 10: 30) for securing studs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky by adding upward tabs, as disclosed by Daudet, in order to better secure the studs to the track.

**Claims 13-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,845,601 to Kostecky in view of U.S. Patent No. 6,301,854 to Daudet et al. further in view of U.S. Patent No. 5,942,213 to Lee.**

Regarding claims 13-15, and 17, Kostecky in view of Daudet does not disclose the use of indicia on the track body. Lee discloses indicia on construction material in an ascending and descending manner, numerically (fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky in view of Daudet by adding the indicia, as disclosed by Lee, in order to speed installation of the tracks and to aid in the cutting of tracks since laborers would be able to skip the step of measuring the track.

Regarding claim 17, Kostecky discloses a track having a U shape (fig. 2: 3) with a plurality of aligned apertures on the sides (fig. 1: see apertures on side 12 & 13 and where 14 points), and ends of studs (20) seated in the track. Kostecky also discloses a lip edge (fig. 1: right and left side edges 6) which engages a bracket (fig. 1: corner bracket 9). Kostecky discloses pairs of apertures but does not disclose them as having a diameter (being rounded). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apertures of Kostecky to be rounded as a simple design choice since structurally, there would be no negative effects between a squared aperture and a rounded aperture. However, Kostecky does not disclose the use of upward extending tabs in the track bottom. Daudet discloses pairs of upward extending tabs in a track bottom (fig. 10: 30) for securing studs. It would have been obvious to one having ordinary skill in the art at the time the invention

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was made to modify Kostecky by adding upward tabs, as disclosed by Daudet, in order to better secure the studs to the track. However, Kostecky in view of Daudet does not disclose the use of indicia on the track body. Lee discloses indicia on construction material in an ascending and descending manner, numerically (fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky in view of Daudet by adding the indicia, as disclosed by Lee, in order to speed installation of the tracks and to aid in the cutting of tracks since laborers would be able to skip the step of measuring the track.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to stud tracks in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

2/26/07

Examiner AU 3635